

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

STEPHEN JOSEPH BOLLENBACH,)
)
Plaintiff,)
) **Case No. CIV-11-857-W**
STATE OF OKLAHOMA, et al.)
)
Defendants.)

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing pro se, brings this action pursuant to 42 U.S.C. § 1983, alleging various violations of his constitutional rights. United States District Judge Lee R. West referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Upon reviewing the docket herein, the Court noted that Defendant Slabotsky had filed both a motion to dismiss [Doc. No. 32] and a motion for summary judgment [Doc. No. 52]. The motions rely upon identical grounds; the only difference is that the motion for summary judgment offers as evidence the docket sheet in Plaintiff's state criminal proceedings.

Because it appeared to the undersigned that the motion for summary judgment effectively superseded the motion to dismiss, Defendant Slabotsky was directed to inform the Court as to his intention with regard to his pending motion to dismiss. He was also informed that if he intended for the motion for summary judgment to supersede the motion to dismiss, he could withdraw the motion to dismiss.

On August 20, 2012, Defendant Slabotsky notified the Court that he did indeed intend for the motion for summary judgment to supersede the motion to dismiss. [Doc.

No. 59]. However, he did not withdraw the motion. Accordingly, it is hereby recommended that the motion to dismiss be denied as moot.¹

RECOMMENDATION

In light of the foregoing, it is recommended that Defendant Slabotsky's Motion to Dismiss [Doc. No. 32] be denied as moot. The parties are advised of their right to file an objection to this Report and Recommendation with the Clerk of Court by September 11, 2012, in accordance with 28 U.S.C. § 636 and Fed.R.Civ.P. 72. The parties are further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation **does not** dispose of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 21st day of August, 2012.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE

¹The undersigned notes Defendant's Slabotsky's comments regarding Plaintiff's failure to respond to the motion for summary judgment, and will address those at the time a recommendation regarding that motion is proposed.